

**CITY OF BEVERLY
WETLANDS PROTECTION ORDINANCE**

**Beverly Conservation Commission
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Beverly, MA 01915**

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(Ord. No. 234, 12-6-01)

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Sec. 24. 1. **PURPOSE**

The purpose of this ordinance is to provide more protection to the wetland resource areas of the City of Beverly than is already granted by the Wetland Protection Act M.G.L. Chapter 131, Section 40 and the Regulations 310 CMR 10.00. It is intended to be more protective than the existing regulations and therefore more beneficial to the specific needs and values of this community. It would provide the Conservation Commission more authority to regulate activities that might have a harmful effect on the following important interests: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, shellfish, wildlife and rare species habitat, agriculture, aquaculture and recreation.

Sec. 24. 2. **JURISDICTION**

Except as permitted in writing by the Commission, or as provided in this Ordinance, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the City's wetland resource areas, consisting of:

- 1) any isolated vegetated wetland,
- 2) any vernal pool,
- 3) any vegetated wetland bordering on any creek, river, stream, pond or lake,
- 4) any bank, beach, fresh or salt water marsh, wet meadow, bog or swamp,
- 5) any land under any creek, river stream, pond or lake,
- 6) any 100-foot buffer zone of wetland areas 1-5 listed above,
- 7) any land subject to storm flowage, or flooding by groundwater or surface water,
- 8) the 200-foot riverfront area,
- 9) ocean

The wetland resource areas listed in 1-9 above may also be protected under the Massachusetts Wetlands Protection Act. M.G.L. Chapter 131, Section 40 ("the Act") and its accompanying regulations 310 CMR 10.00.

The Commission shall not grant such permission without receiving written notice of the intention to conduct such activity, and without issuing written permission to do so all in compliance with the provisions of this Ordinance.

Sec. 24.3. EXEMPTIONS

This Ordinance shall not apply to the following activities:

1. Emergency projects as defined in the Commission's regulations (Section II); or
2. Maintenance, repair, or replacement, without substantial change or enlargement, of existing and lawfully located structures or facilities used in the service of the public and used to provide electric, gas, water distribution, telephone, or other telecommunication services to the public; or
3. Normal maintenance of land in active agricultural use, as defined in the Commission's regulations (Section II); or
4. Maintenance and repair of existing public ways; and

All appropriate measures should be undertaken to prevent damage to any resource areas that would have a detrimental effect on the interests of the Ordinance and the Act.

Sec. 24.4. APPLICATIONS TO PERFORM WORK AND INFORMATION REQUIRED

All applications to perform activities in the City's resource areas shall be either in the form of a Request for Determination of Applicability or a Notice of Intent, or both. Such applications shall contain data and plans as specified in the Commission's regulations, and shall be submitted in complete written form to the Commission as required by this Ordinance, regulations, and application checklist (Appendix A of Regulations). The date which serves to commence the Commission's deliberation period is the date of receipt of the application at its offices, during regular office hours. The City's Conservation Administrator shall be authorized to make determinations of completeness for applications submitted to the Commission and shall reject, within two (2) business days, those applications that do not meet the minimum submittal requirements of this Ordinance, regulations, and application checklist. In order to provide sufficient review time the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or applicant's agent, less than seven (7) business days before the scheduled public hearing or public meeting.

The applicable forms may be obtained from the Commission and must be signed by the applicant or applicant's agent where required. The Commission may require further information by Regulations, guideline, or as otherwise deemed necessary by the Commission. No such application shall be accepted as complete before all permits, variances, and approvals required by the Ordinances of the City with respect to the proposed activity, at the time of such Notice, have been applied for or obtained. Such application shall also include any information

submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the resource area(s).

Upon receipt of a permit application or RFD for complex projects such as subdivisions, the Commission is authorized to require the applicant to pay with a reasonable cost determined by the Commission (not to exceed 0.5% or \$5,000) for specific expert engineering and other consultant services deemed necessary by the Commission to finalize the decision on the application. Any unused portion will be returned to applicant.

Sec. 24.5. HEARINGS

A) Combination with State Law Hearing:

The said Commission, in its discretion, may hear any oral presentation under this Ordinance at the same public hearing required to be held under the provisions of Chapter 131, Section 40 of the Massachusetts General Laws. Notice of the time and place of such hearing(s) shall be given as required below.

B) Notice:

Notice of the time and place of the hearing shall be given at the applicant's expense, not less than seven (7) calendar days prior to the public hearing, by publication in a newspaper of general circulation in Beverly, and by mailing a copy of such notice to all land owners within 300 feet of land on which the work is proposed. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street address, if any, or other adequate identification of the location of the area or premises which is the subject matter of the hearing, and the nature of the action or relief requested, if any. Public notice requirements for continued public hearings under this Ordinance shall be the same as the notification requirements set forth in 310 CMR 10.05(5)(b)3.

C) Proof:

The applicant shall have the burden of providing by a preponderance of credible evidence that the activity proposed in the Notice of Intent will not cause adverse impacts to any of the interests and values intended to be protected by this Ordinance. Failure to provide the Commission adequate evidence for it to determine that the proposed activity will not cause adverse impacts shall be sufficient cause for the Commission to deny permission or to grant such permission with such conditions as it deems reasonable, necessary, or desirable to carry out the purposes of this Ordinance; or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

Due consideration shall be given to possible effects of the proposal on all interests and values to be protected under this Ordinance and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

Filing fees are non-refundable. Review fees not totally expended by the Commission shall be refunded.

D) Continuances:

The Commission may continue a public hearing or public meeting in the following situations:

1. With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
2. Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others; and
3. Any application that expires would require refiling of the Notice of Intent.

E) Investigations:

The Commission, its agents, officers, and employees, may enter upon privately owned land for the purpose of carrying out its duties under this Ordinance and may make or cause to be made such examination or survey as deemed necessary.

Sec. 24.6. ORDERS AND DECISIONS

A) All Orders and Decisions:

If the Commission determines that the proposed activity does not require the imposition of conditions to preserve and protect the interests of this Ordinance, the applicant shall be so notified in writing.

If, after the hearing, the Commission determines that the proposed activity is significant to one or more interests and values of this Ordinance, the Commission may vote to issue written Orders of Conditions within 21 days of the close of the public hearing. The Commission may impose such conditions, safeguards, and limitations on time and use upon such activity as it deems necessary to protect those interests and values.

The Commission may prohibit such activity altogether, in the event that it finds that the interests and values of this Ordinance cannot be preserved and protected by the imposition of such conditions, safeguards, or limitations.

B) Security to Assure Performance:

The Commission may, as part of its Order of Conditions, require, in addition to any security required by any other City or State Board, Commission, agency, or officer, that the performance and observance of the conditions, safeguards, and limitations imposed under this Ordinance on the applicant and owner be secured by one, or both, of the following methods:

1. Deposit:

By the deposit of money, sufficient to complete the work as proposed, to secure performance of the conditions and observance of the safeguards of such Order of Conditions. Such security, if filed or deposited, shall be approved as to form and manner of execution by City Counsel or the City Treasurer.

2. Land Restriction(s):

By a Conservation restriction, easement, or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

C) Duration of Orders:

All Orders of Conditions shall expire three (3) years after the date of issuance. An Order of Conditions may be extended for one (1) year upon the request of the applicant. The request for an extension of an Order of Conditions shall be made to the Commission at least 30 days prior to expiration of the Order of Conditions. The Commission may grant only two (2) extensions for an individual Order of Conditions.

No activity governed by an Order of Conditions shall be performed unless and until all permits, approvals, and variances required by the Ordinances of the City shall have been obtained, such Order of Conditions or notification shall have been recorded or registered at the Essex South District Registry of Deeds, and all applicable appeal periods have expired. The Commission shall have the right to record or register its Order of Conditions with said Registry of Deeds. No work shall proceed until proof is provided that the Order of Conditions has been properly recorded at the Registry of Deeds. In the event that an Order of Conditions issued pursuant to this Ordinance is identical to a final Order of Conditions issued pursuant to the provisions of M.G.L Chapter 131, Section 40, only one such order need be recorded or registered.

D) Modifications, Amendments, Revocations:

The Commission shall have the authority (on its own motion or upon the petition of the applicant, or any person interested) to modify, amend, or revoke an Order of Conditions. In revoking an Order of Conditions, the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date. In the case of an amendment to an Order of Conditions, the Commission shall have the discretion to decide if a public hearing is warranted. This decision shall be based on the potential impact of the proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and Ordinance. No public hearing is required for a modification to an Order of Conditions. Written notification to the applicant by certified mail is required in all cases where the Commission initiates a modification, amendment, or revocation of an Order of Conditions.

Sec. 24.7. CERTIFICATES OF COMPLIANCE

The Commission shall, upon receiving a written request and weather permitting, inspect the resource areas where the activity governed by an Order of Conditions was carried out and issue a Certificate of Compliance (or Partial Certificate of Compliance) to the owner of the property, applicant, or applicant's representative, in a form suitable for recording or registering, if it shall determine that all of the activity(ies), or portions thereof, limited thereby have been completed in accord with said Order.

Sec. 24.8. RULES AND REGULATIONS

The Commission shall be empowered to establish Rules and Regulations to govern its affairs, including but not limited to fees, definitions, use of consultants, security to assure performance, performance standards for work in wetland resource areas, and such other information the Commission deems necessary to discharge its responsibilities. After due notice and public hearing, the Commission may promulgate such rules and regulations to effectuate the purposes of this Ordinance, by a majority vote of the duly appointed members.

Failure by the Commission to promulgate such rules and regulations, or a legal declaration of their validity by a court of law, shall not act to suspend or invalidate the effect of this Ordinance.

Sec. 24.9. ENFORCEMENT, INVESTIGATIONS, VIOLATIONS

In accord with the provisions of M.G.L. Chapter 40, Sections 21D and 31 as well as every other authority and power that may have been or may hereafter be conferred upon it, the City may enforce the provisions of this Ordinance, restrain

violations thereof, and seek injunctions and judgments to secure compliance with its Orders of Conditions. Without limiting the generality of the foregoing:

- A) Any person who violates any provision of this Ordinance or of any condition of a permit issued pursuant to it may be punished by a fine pursuant to Massachusetts General Laws, Chapter 40, Section 21. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This Ordinance may be enforced pursuant to Massachusetts General Laws Chapter 40, Section 21D, by a City police officer, other persons having police powers, Conservation Commissioners, or the Conservation Administrator.

In accordance with Ch. 40 S. 21D, violators shall, at the discretion of the enforcement authorities, be charged a penalty. The penalties for violations of this Ordinance or regulations promulgated hereunder may be assessed as follows:

<u>Violation</u>	<u>Penalty/Violation/Day</u>
Alteration of any wetland resource area identified in Section 1.2 of this Ordinance:	\$100
Violation of any Order of Conditions:	\$100
Depositing any refuse, debris, yard waste in a wetland or water body:	\$100
Depositing any construction material in a wetland or water body:	\$500
Alteration of any stream or water body:	\$100
Violation of any section of this Ordinance that occurs in the Watershed Overlay District:	\$200

- B) In the event of a violation of this Ordinance or of any order issued thereunder, the Commission or its agents may issue a stop work order to the owner, the applicant, or the applicant's agent by certified mail, return receipt requested, or by posting the same in a conspicuous location on said site. Any person who shall violate the provisions of a stop work order shall be deemed in violation of the Ordinance; but the failure of the Commission to issue a stop work order for any reason shall not prevent the City from pursuing any other legal remedy at law or in equity to restrain violations of this Ordinance or promulgated regulations and to secure compliance with its Orders.

- C) The City shall be the beneficiary of all fines imposed on account of the violation of this Ordinance or promulgated regulations in order to defray the expense of enforcing the same.
- D) Upon request of the Commission, the City Council and City Solicitor shall take such legal action as may be necessary to enforce this Ordinance or promulgated regulations and permits issued pursuant to it.
- E) Upon recommendation of the Commission, the City Council may employ Special Counsel to assist the Commission in carrying out the legal aspects, duties, and requirements of this Ordinance and promulgated regulations.

Sec. 24.10. RESPONSIBILITY FOR COMPLIANCE AFTER OWNERSHIP TRANSFERS

After the recording of a Notice of Violation or Order, any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Ordinance or in violation of any Order issued under the Ordinance shall forthwith comply with any such Order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of death by which such real estate was acquired by such person.

Sec. 24.11. CAPTIONS AND SEVERABILITY

The captions used herein are for convenience only and are expressly intended to have no legal or binding significance. The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or decisions which have previously become final.